

REMARKS

In the Office Action, the Examiner subjected claims 1, 2, 4-9, 11-14, 26 and 27 to an election of species requirement. Specifically, the Examiner required the Applicants to elect one of the following species: Group I – Figures 1-5; or Group II – Figures 6-7. In addition, the Examiner noted that “[u]pon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.” Office Action, paper 09222004, page 2. The Examiner asserted that no claims appear generic. *See id.* at page 2.

In response to this election of species requirement, the Applicants elect the species corresponding to Group I *with traverse*. After careful review of the foregoing groups and the pending claims, the Applicants believe that claims 1, 2, 4-9, 11-14, 26 and 27 read on the elected species of Group I, Figures 1-5. Applicants further note that independent claims 1, 7, 13, 26, and 27 and dependent claims 2-6, 8, 9, 11, 12, and 14 are generic to the species of Groups I and II.

In addition, the Applicants object to the Examiner’s election of species requirement on the ground of a lack of “serious burden” on the Examiner. As set forth in the Manual of Patent Examining Procedure, the criteria for an election requirement includes: (1) the inventions must be independent or distinct, and (2) there must be a serious burden on the Examiner. *See* M.P.E.P. (Rev. 2, May 2004) §§ 802.02 and 803. In this case, the Applicants stress that the prosecution history evidences no burden, much less a “serious burden,” on the Examiner.

For example, during the course of prosecution of the present application, the Examiner repeatedly examined the claims, formulated rejections, and considered the Applicants’ arguments in eight separate Office Actions. Specifically, the Examiner

formulated Office Actions on the merits on June 5, 2002, September 17, 2002, February 24, 2003, May 15, 2003, June 25, 2003, November 14, 2003, February 11, 2004, and April 8, 2004. Clearly, examination of these claims was *not* a “*serious burden*” on the Examiner, because the Examiner was able to perform prior art searches and formulate rejections of the pending claims on numerous occasions during prosecution of the present application. Therefore, the Applicants believe that the Examiner’s election of species requirement is improper and cannot stand. Again, the Applicants stress that:

If the search and examination of an entire application can be made *without serious burden*, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.

M.P.E.P. (Rev. 2, May 2004) § 803. For these reasons, the Applicants respectfully request that the Examiner withdraw the election of species requirement and examine all pending claims.

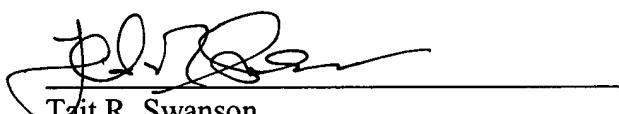
With reference to the Manual of Patent Examining Procedure, the Applicants also emphasize that “[p]iecemeal examination should be avoided as much as possible.” M.P.E.P. (Rev. 2, May 2004) § 707.07(g), Page 700-122. Moreover, “the examiner should never overlook the importance of his or her role in allowing claims which properly define the invention.” *Id.* at § 706, Page 700-17. Over the course of prosecuting the present application, the Applicants have clarified the claims by way of amendments and statements, which clearly indicate the deficiencies of the prior art. Instead of recognizing the allowable subject matter of these claims (as the Examiners should have done), the current and previous Examiners have unreasonably interpreted the claims and have applied prior art references that, taken alone or in combination, clearly lack the features of the claims. From the Applicants’ viewpoint, it appears that the Examiners are simply giving the claims and the prior art a cursory review, thereby leading to piecemeal examination and improper delays in the allowance of otherwise allowable subject matter. In view of the instant Election of Species of Requirement, it also appears that the current

Examiner is delaying prosecution rather than addressing the Applicants' previous amendments and remarks. As noted above, the Applicants believe that all of the pending claims read on both species. Thus, once again it appears that the Examiner is reviewing the claims and the figures with undue attention to details. For these reasons, the Applicants respectfully request the Examiner to withdraw the Election of Species Requirement, carefully review the claims and the prior art, and allow the pending claims.

If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: October 28, 2004



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